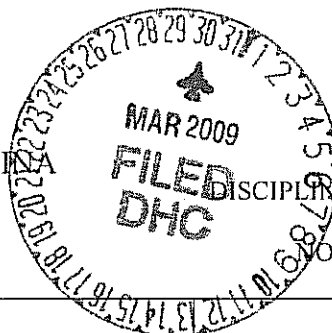


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
07 DHC 27

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

SUSANNA G. GARZA, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER OF DISCIPLINE

This matter was heard on 6 March 2009, before a hearing committee of the Disciplinary Hearing Commission composed of Theodore C. Edwards II, Chair, Robert F. Siler, and Donald G. Willhoit. Carmen K. Hoyme represented Plaintiff, the North Carolina State Bar. Alan M. Schneider represented Defendant, Susannah G. Garza. Based upon the pleadings and the evidence presented at the hearing, the hearing committee hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar, Chapter 1 of Title 27 of the North Carolina Administrative Code ("NCAC").

2. Defendant, Susannah G. Garza (hereinafter "Garza" or "Defendant"), was admitted to the North Carolina State Bar in 2002, and was at all times referred to herein an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.

3. During the relevant periods referred to herein, Garza was engaged in the practice of law in the State of North Carolina and maintained a law office in Charlotte, Mecklenburg County, North Carolina.

4. Garza was properly served with process and received due notice of the hearing in this matter.

5. In 2006, Garza represented Mario Llamas-Hernandez ("Llamas-Hernandez") on drug-related charges in Mecklenburg County.

6. Garza filed a Motion to Reveal Confidential Informant in Llamas-Hernandez's case, seeking to compel the State to reveal all its information about a confidential informant (CI) in the case.

7. The Motion to Reveal Confidential Informant was addressed by the court on 8 May 2006, at an in-chambers conference and a hearing in Llamas-Hernandez's case.

8. At the in-chambers conference prior to the 8 May 2006 hearing, the assistant district attorney (ADA) prosecuting the case provided Garza the CI's name and the amount of compensation he had received.

9. The ADA did not provide Garza with the CI's address.

10. At the 8 May 2006 hearing, the court indicated that the Motion to Reveal Confidential Informant was moot because the ADA had "elected to provide the name of the informant" in chambers.

11. On 16 May 2006, the ADA gave Garza the CI's cell phone number.

12. On or about 16 May 2006, Garza called the CI, introduced herself as an attorney, and stated who she represented.

13. When Garza asked the CI if she could meet with him, he responded that he was busy working.

14. Garza gave the CI her phone number, but he did not call.

15. Garza instructed her secretary to continue calling the CI's cell phone as part of their effort to determine whether the CI lived in Charlotte.

16. Garza also directed her secretary to tell the CI they had met in a nightclub and to propose that they arrange a meeting.

17. When Garza's secretary contacted the CI by phone, she told him they had met in a nightclub and she wanted to meet him.

18. The statements made by Garza's secretary to the CI were false.

19. At Garza's direction, Garza's secretary did not disclose to the CI that she worked for Garza.

20. At a 31 July 2006 hearing in Llamas-Hernandez's case, Garza stated to the court that she had personally contacted the CI by phone, disguised her voice, and attempted to arrange a meeting with him by telling him that they had met socially at a nightclub.

21. In June 2006, Jerzain Flores Roman ("Roman") retained Garza to represent him on a charge of speeding 51 mph in a 35 zone.

22. In plea negotiations with the assistant district attorney (ADA) on 25 August 2006, Garza stated that Roman had a clean driving record for the preceding three years.

23. Roman in fact had a two-year-old conviction for Driving While Impaired (DWI).

24. The ADA asked Garza to provide a copy of Roman's driving record.

25. Garza then went to the Clerk of Court's office and asked to use the Clerk of Court's computer.

26. Using the Clerk of Court's computer, Garza obtained Roman's driving record and altered it by deleting the 2004 DWI conviction.

27. Garza printed the altered version of Roman's driving record and presented it to the ADA.

28. Relying upon Garza's representations and the altered record provided by Garza, the ADA allowed Roman to enter a plea of guilty to the lesser charge of improper equipment.

30. In August 2007, Garza was retained to represent Rafael Garcia Hernandez on a criminal charge and in immigration matters.

31. The objective of the immigration representation was for Hernandez to voluntarily depart the United States rather than being deported.

32. Hernandez's fiancé, April Denise Neal, paid Garza's fees and provided Garza with funds to purchase a plane ticket to Mexico for Hernandez.

33. Neal initially sent Garza \$410.00 for the ticket by check dated 6 November 2007. The 6 November 2007 check was for a total of \$910.00, \$500.00 of which was for Garza's fees, and \$410.00 of which was for the purchase of the ticket.

34. Garza deposited the 6 November 2007 check from Neal into her personal bank account, rather than an attorney trust account.

35. Garza subsequently told Neal that the ticket would cost an additional \$365.00, which Neal provided to Garza by check dated 16 November 2007.

36. Garza deposited the 16 November 2007 check from Neal into her personal bank account, rather than an attorney trust account.

37. Hernandez was deported on 13 December 2007, so it became unnecessary to purchase the plane ticket for him.

38. Garza did not use the \$775.00 provided by Neal to purchase a plane ticket for Hernandez. Instead, she utilized the \$775.00 entrusted to her for purchase of Hernandez's plane ticket for some other purpose.

39. Neither Neal nor Hernandez authorized Garza to use the \$775.00 for any purpose other than the purchase of the plane ticket.

40. Garza failed to hold the \$775.00 in trust for Hernandez.

41. In February 2008, Neal contacted Garza to inquire about Hernandez's case and the money designated for the plane ticket.

42. Garza responded to Neal by email on or about 26 February 2008, in which she told Neal she was "still waiting on the airline ticket refund."

43. From the date of that email through June 2008, Neal made repeated attempts to contact Garza but received no response.

44. In or about June 2008, Neal contacted the State Bar's Attorney Client Assistance Program (ACAP), for assistance in communicating with Garza and obtaining a refund of the \$775.00 entrusted to Garza for the plane ticket.

45. Garza told ACAP staff that she would send a check for the \$775.00 to Neal by 26 June 2008.

46. Garza failed to refund Neal's money by 26 June 2008, and Neal made several more attempts to contact Garza without success.

47. Garza eventually refunded Neal's money in the following three installments:

- a. A \$280.00 money order on 28 July 2008,
- b. A \$300.00 money order on 19 August 2008, and
- c. A \$200.00 payment by Western Union on 19 September 2008.

Based on the record and the foregoing Findings of Fact, the hearing committee makes the following

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the panel has jurisdiction over Defendant, Susanna G. Garza, and the subject matter.

2. Garza's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

- (a) By directing her secretary to make false representations to the CI, Garza violated the Rules of Professional Conduct through the acts of another in violation of Rule 8.4(a), knowingly made false statements of material fact to a third party through the acts of another in violation of Rule 4.1, implied to an unrepresented party through the acts of another that she was disinterested in violation of Rule 4.3, and engaged in conduct involving dishonesty, deceit, and misrepresentation in violation of Rule 8.4(c);
- (b) By stating to the court that she, personally, had called the CI and disguised her voice in order to ascertain his whereabouts, when in fact her secretary had done so, Garza made a false statement of material fact to the tribunal in violation of Rule 3.3(a)(1) and engaged in conduct involving dishonesty, deceit, and misrepresentation in violation of Rule 8.4(c);
- (c) By stating to the ADA that Roman had no convictions in the preceding three years and by representing to the ADA that the altered driving record was an accurate copy of Roman's driving record, Garza knowingly made false statements to a third person in the course of representing a client in violation of Rule 4.1, and engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c);
- (d) By fabricating an altered version of Roman's driving record, Garza engaged in the unlawful alteration of evidence or material having potential evidentiary value in violation of Rule 3.4(a), falsified evidence in violation of Rule 3.4(b), and engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c);
- (e) By making knowingly false representations to opposing counsel and unlawfully altering and falsifying evidence, Garza engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (f) By failing to deposit the 6 November 2007 check from Neal, \$500.00 of which was for Garza's fees and \$410.00 of which was for the purchase of the ticket, into a trust account, Garza failed to deposit mixed funds intact in violation of Rule 1.15-2(g);
- (g) By depositing the \$775.00 entrusted to her for the purchase of Hernandez's plane ticket into her personal bank account, Garza failed to maintain entrusted funds separate from her personal funds in violation of Rule 1.15-2(a);

- (h) By willfully and knowingly utilizing the \$775.00 entrusted to her for the purchase of Hernandez's plane ticket for some other purpose without authorization from Hernandez or Neal, Garza used entrusted funds for her personal benefit or the benefit of a third party in violation of Rule 1.15-2(j), engaged in criminal conduct—embezzlement—that reflects adversely on her honesty, trustworthiness, or fitness to practice in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c);
- (i) By refunding Neal's money more than six months after Neal's initial request for a refund, Garza failed to promptly deliver entrusted property to which Neal was currently entitled, in violation of Rule 1.15-2(m); and
- (j) By stating to Neal that she was "waiting on the airline ticket refund" when she had not purchased an airline ticket and was not awaiting a refund, Garza knowingly made a false statement of material fact in violation of Rule 4.1 and engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c).

Based upon the foregoing Findings of Fact and Conclusions of Law, and the additional evidence regarding discipline presented at the hearing, the hearing committee hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT AND CONCLUSIONS REGARDING DISCIPLINE

1. Garza's misconduct is aggravated by the following factors:
 - a. Dishonest or selfish motive;
 - b. A pattern of misconduct;
 - c. Multiple offenses; and
 - d. Vulnerability of the victims, including the ADA and the former Clerk of Court who testified regarding the Roman matter, in that they had to rely on representations by Garza as an officer of the court in order to perform their respective jobs.
2. Garza's misconduct is mitigated by the following factor:
 - a. Absence of a prior disciplinary record.
3. The aggravating factors outweigh the mitigating factor.

4. Garza's actions caused significant actual harm to her client in that her misappropriation of the \$775.00 entrusted to her by Neal deprived Neal of funds to which Neal was entitled, resulting in significant financial hardship to Neal.

5. Garza's actions caused significant actual harm to the profession, in that members of her community are aware of her misconduct. Such publicity erodes public confidence in, tends to sully the reputation of, and fosters disrespect for, the profession as a whole.

6. Garza's actions caused significant actual harm and significant potential harm to the administration of justice. The ADA in the Roman matter relied upon the falsified record produced by Garza, and additional time and effort had to be expended to return the matter to status quo. Thereafter, neither the ADA nor the Clerk felt they could rely on Garza's word as an officer of the court, impeding the efficient administration of justice in cases in which she was involved.

7. The hearing committee has considered lesser alternatives and finds that a public censure or reprimand or suspension of Garza's law license would not be sufficient discipline because of the gravity of the actual harm to her client and to the legal profession caused by Defendant's conduct, and the threat of significant potential harm Defendant poses to the public and to future clients.

8. The hearing committee has considered lesser sanctions and finds that discipline short of disbarment would not sufficiently protect the public for the following reasons. Garza engaged in a continuing course of multiple offenses constituting a pattern of dishonesty and deceit in various and distinct circumstances, causing harm to clients, the profession, and the administration of justice. Garza continued her dishonest and deceitful behavior even after the filing of the original complaint in this case, and despite assuring the State Bar's Grievance Committee in her written response to its inquiry in March 2007 that she would "never" engage in further dishonest acts. Entry of an order imposing less serious discipline would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

9. The hearing committee therefore finds that the only sanction in this case that can adequately protect the public is Garza's disbarment.

Based upon the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact and Conclusions Regarding Discipline, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

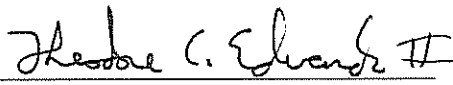
1. Defendant, Susanna G. Garza, is hereby DISBARRED from the practice of law.

2. Defendant shall surrender her license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.

3. Defendant shall pay the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar, including DHC costs as follows: court reporter costs and witness costs. Defendant must pay the costs within 30 days of service upon her of the statement of costs by the Secretary.

4. Defendant shall comply with all provisions of 27 NCAC 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules.

Signed by the Chair with the consent of the other hearing committee members,
this the 30th day of March, 2009.


Theodore C. Edwards, II, Chair
Disciplinary Hearing Committee